IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

This Document Relates to: Ruden v. C.R. Bard, Inc.

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Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendant Sutter West Bay Hospitals, doing business as California Pacific Medical Center's (hereinafter "CPMC") motion to dismiss Plaintiff Wayne Ruden's Second, Ninth, and Tenth Causes of Action and the request for punitive damages set forth in the Complaint against CPMC was heard before this Court on

After reviewing the briefs and hearing the arguments of counsel, and good cause appearing therefor:

IT IS HEREBY ORDERED:

Defendant CPMC'S motion to dismiss the Second, Ninth, and Tenth Causes of Action and the request for punitive damages set forth in the Complaint against CPMC is GRANTED WITH PREJUDICE. The Complaint fails to state a claim upon which relief can be granted against CPMC, in that CPMC does not owe a fiduciary duty of care to Plaintiff Ruden under Moore v. Regents of University of California, 51 Cal.3d 120 (1990).

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CPMC did not have a duty to inform Plaintiff of the FDA's August 2010 correspondence, which renders invalid Plaintiff's cause of action for negligence as to CPMC. Derrick v. Ontario Community Hospital, 47 Cal.App.3d 145 (1975). Moreover, this is essentially a product liability action, and under California law, a medical provider such as CPMC cannot be held strictly liable for product defects. Silverhart v. Mount Zion Hospital, 20 Cal.App.3d 1022 (1971). Finally, Plaintiff's punitive damages claim is legally and factually unsubstantiated and insufficiently pled against CPMC, a California corporation.

Therefore, the Second, Ninth, and Tenth Causes of Action, and plaintiff's punitive damages claim are dismissed without leave to amend.

IT IS SO ORDERED.

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